IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 967 of 2003
with
CIVIL APPLICATION NO. 2421 OF 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIV VANI UNIVERSAL LTD THRO' GENERAL MANAGER

Versus

STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 967 of 2003
MR SR BRAHMBHATT for Petitioner No. 1-2
MR. PREMAL JOSHI, AGP, for Respondent No. 1-3

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 10/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

This petition was initially placed before the learned Single Judge on 4.2.2003, since the prayer, as it stood at that time, was for a declaration that the action of the respondents in detaining the rig of the petitioners was illegal, arbitrary and unconstitutional. A direction was sought for release of the rig. In the amended prayer, the petitioners have challenged the notice dated 31.1.2003 and the order dated 6.2.2003 issued by the respondent No. 3 as illegal and mala fide. In the demand notice dated 31.1.2003 at Annexure-G to the petition it was stated that the tax in respect of the vehicle for the period from January 1997 to June 2003 was not paid at the regular rate. The difference of taxes was worked out along with penalty at Rs. 30,82,325/-. The petitioners were called upon to explain the non-payament or arrange for payment of the difference. In the note below the said notice it was stated that the real Unladen Weight of the vehicle was 259.446 M.T., while the tax was paid on the footing that the Unladen Weight was 26.5 M.T. Since by the subsequent amendment the question of tax was raised in the petition, the matter came up before the Division Bench, after the Rule was issued in the petition by the learned Single Judge.

2. When Rule was issued by the learned Single Judge on 4.2.2003 and made returnable on 7.2.2003 the learned Single Judge also made an order that the respondents will be at liberty to decide the application of the petitioners for release of the vehicle. On 21.2.2003 the matter came up for hearing on the question of interim relief. Since the petitioners had filed an appeal as per Annexure-H to the petition with the competent authority and also placed on record the receipt showing payment of appeal fee of Rs. 25/- and since one of the contentions that was raised was that the vehicle could not have conceivably weighed 259.446 M.T., as stated in the note below the demand notice dated 31.1.2003 which had a bearing on factual aspect, the Division Bench in para 6 of its order observed that the matter merited immediate attention of the concerned appellate authority who should examine this aspect along with the other contentions. The Commissioner of Transport before whom the appeal was filed was, therefore, directed to take up the matter and examine the contentions that were raised on behalf of the petitioners and take a decision in the appeal within the time indicated in the order. Thereafter, the Commissioner of Transport as per this direction, after hearing the petitioners and considering the written

objections placed before him, made a speaking order on 4.3.2003 dismissing the appeal. This order has been made under Section 14 of the Bombay Motor Vehicles Tax Act, 1958. The petitioners have now amended the petition and challenged the said order also.

3. When this petition was called for final hearing, the learned counsel appearing for the respondents raised a preliminary objection pointing out that under Section 14A of the Bombay Motor Vehicles Tax Act, 1958, a Revision Application was maintainable against the said order of the Commissioner of Transport. It was submitted that since the Commissioner has now made an order, the petitioners have an alternative and efficacious remedy under the provisions of Section 14A of the Bombay Motor Vehicles Tax Act.

4. We have heard learned counsel for the petitioners, on the preliminary objection raised on behalf of the respondents, at length. It is argued by the learned counsel that in view of the registration book of the vehicle and No Objection Certificate issued under Section 48 of the Motor Vehicles Act, 1988, indicating that tax is paid and the authority had no objection if the vehicle is transferred to Andhra Pradesh, the taxation authority could not re-open the assessment without cancellation of the Certificate issued under Section 48 of the Motor Vehicles Act, 1988, if at all it had any such power of cancelling the Certificate. The learned counsel further argued that while registering the vehicle under Section 41 of the Motor Vehicles Act, 1988, the authority also acts as the taxation authority. He submitted that neither the Bombay Motor Vehicles Tax Act, 1958 nor the Motor Vehicles Act, 1988 provide for re-opening of any assessment and therefore the order of recovery of tax passed on 31.1.2003 by the Inspector of Motor Vehicles and the Taxation Authority was without jurisdiction. It was also argued that the registration book showed that it was issued both under the Bombay Motor Vehicles Tax Act, 1958 as well as Motor Vehicles Act, 1988. The learned counsel referred to the provisions of Section 41. Provisions of Sections 2(37), 41, 48, 65(2), 65(2)(b) of the Registration Act and Rule 47 of the Central Motor Vehicles Rules,1989, in support of his contention. He also submitted that the Commissioner of Transport had wrongly observed that the weight of the rig was 259.446 M.T. and this he had done on the basis of Customs and Clearance document. According to the learned counsel, in fact, in the container there were two rigs and it was the weight of that container which was referred to by the Commissioner.

He fairly admitted that no such argument was canvassed before the Commissioner on the said factual aspect.

4.1 In support of his contention the learned counsel relied on the following decisions:

(i) The decision of the Supreme Court in the case of J.K. KAPUR VS. STATE OF GUJARAT reported in (1974) 4 SCC 92 was cited to point out that in a case where the Act (Bombay Entertainment Duty Act) did not contain any provision for re-opening assessments already made and pursuant to return by the proprietor, payments were made and accepted under Section 4(2)(b) and it was held that tax must be deemed to be assessed and paid and the State cannot thereafter reopen the concluded assessment and seek to levy tax or duty which had escaped. The Supreme Court followed the ratio of its earlier decision in LIBERTY TALKIES VS. THE STATE OF GUJARAT reported in (1971) 1 SCC 471 which was also referred to by the learned counsel.

(ii) The decision of the Supreme Court in the case of RATHI ALLOYS AND STEEL LTD. VS. COLLECTOR, CENTRAL EXCISE reported in (1990) 2 SCC 324 was cited to point out that where the matters were already taken to have been settled by Government's own action in favour of class of persons it was held that they cannot be reopened by the Government even though such action may not be strictly in terms of statutory provision.

(iii) The decision of the Supreme Court in the case of WHIRLPOOL CORPORATION VS. REGISTRAR OF TRADE MARKS reported in AIR 1999 SC 22 was cited for the proposition that jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution was not affected in spite of alternative statutory remedies, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

(iv) The decision of the Supreme Court in the case of SALONAH TEA COMPANY LTD. VS. THE SUPERINTENDENT OF TAXES, NOWGONG reported in AIR 1990 SC 772 was cited for the proposition that a writ petition under Article 226 would be maintainable where the refund of tax recovered unauthorisedly is

claimed.

(v) The decision of the Supreme Court in the case of KUNTESH VS. MANAGEMENT, H.K. MAHAVIDYALAYA, SITAPUR reported in AIR 1987 SC 2186 was cited for the proposition that it was well established that a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. It was held that the Vice-Chancellor had no power of such review and, therefore, he acted without jurisdiction in reviewing the order.

5. In the present case, it appears that the vehicle was seized in exercise of power under Section 12B of the Bombay Motor Vehicle Tax Act, 1958 which provides that without prejudice to the provisions of Section 12, 12A and 16 where any tax due under the said Act in respect of any vehicle has not been paid, an officer not below the rank of an Inspector of Motor Vehicles or an Inspector of Police, as the State Government may empower, seize and detain such vehicle and for this purpose, take or cause to be taken all steps as he may consider necessary for the proper maintenance and safe custody of the vehicle until the tax, penalty and interest, if any, due in respect of such vehicle and charges for the custody and maintenance of vehicle thereof is paid. Any person who is aggrieved by any order of a Taxation Authority may file an appeal under Section 14(1) of the Act. The petitioners had already filed an appeal against the order of the Taxation Authority resorting to the provisions of Section 14, before the Commissioner of Transport. The Commissioner has now passed a reasoned in which he has found that the unladen weight of the vehicle in question was 259.446 M.T. as against 26.5 M.T. shown in the R.T.O. book. In his arguments the learned counsel has tried to contend before us that the Customs Clearance document were in respect of a container which had two rigs, but those facts do not appear in the order of the Commissioner of Transport since they have not been argued before him. The question as regards the unladen weight of the vehicle has been decided by the Commissioner of Transport on the existing material before him and if the petitioners have any grievance against that finding it can always be challenged before the Revisional Authority under Section 14A. The revisional powers of the State Government under Section 14A(1) are of a very wide amplitude. Under the said provision the State Government can examine the legality or propriety of any order made by the Taxation Authority under Section 14(1) and if it appears to it that the order requires to be modified or

reversed, it may, after giving an opportunity of being heard to the person affected or interested and after making or causing to be made such inquiry as it deems necessary, pass such order as the circumstances of the case justify, including an order directing fresh proceedings. In UNION OF INDIA Vs. T.R. VARMA, reported in AIR 1957 SC 882, the Supreme Court has held that it is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. In TITAGHUR PAPER MILLS CO. LTD. VS. STATE OF ORISSA reported in AIR 1983 SC 603, the Supreme Court has in terms held that it is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. The nature of the revisional powers clearly indicates that a very efficacious, alternative remedy is available to the petitioners in the matter. The procedure prescribed under the Act cannot be by-passed by availing of the remedy under Article 226 of the Constitution. (DURGA PRASAD VS. NAVEEN CHANDRA (1996) 3 SCC 300).

6. The contention that there is inherent lack of jurisdiction in the concerned authority to make the impugned order is without any substance. When the initial order of seizure is made under Section 12B of the Act on the ground of non-payment of tax, there is no question of reassessing the tax and the question before the authority was whether the tax was paid in accordance with law. No Objection Certificate issued under Section 48 of the Motor Vehicles Act, 1988 was issued by Registering Authority and the contention that the existence of such a certificate precludes any action being taken under Section 12B or any other provisions of the Bombay Motor Vehicles Tax Act, 1958 cannot be countenanced. The purpose of issuing No Objection Certificate under Section 48 of the Motor Vehicles Act, 1988 is to enable the owner of the motor vehicle to transfer the motor vehicle to some other State for registration. In that process, as provided by sub-Section (5) of Section 48, the Registering Authority is empowered to obtain report in writing from the police that no case relating to theft of motor vehicle concerned was reported or pending or to verify whether all the amounts due to the Government including road tax in respect of that motor vehicle have been paid and take into account such other factors as may be prescribed by the Central Government. It would not follow merely by virtue of issue of such certificate that even in a case

where later on it is found that theft was committed in respect of the vehicle for which the certificate was issued, the accused cannot be prosecuted nor can it be said that such certificate absolves the transferor of the vehicle from liability to pay tax as may be raised under provisions of the Bombay Motor Vehicles Tax Act, 1958 which is altogether a different law. Even if same authority is designated to function as a Registering Authority under the provisions of the Motor Vehicles Tax Act, 1988 and also under the provisions of the Bombay Motor Vehicles Tax Act, 1958 to function as Taxation authority, it cannot be said that an action taken under one Act will preclude an action being taken under the other Act unless there is any specific provision to that effect. The Commissioner of Transport has exercised his powers under Section 14 of the Bombay Motor Vehicles Tax Act and given findings of fact on the question of the Unladen Weight of the vehicle on the basis of which tax was required to be paid and the correctness of such a decision can always be examined by the Revisional Authority under Section 14A of the Act. We do not find any inherent lack of jurisdiction in the authority exercising their powers under the Bombay Motor Vehicles Tax Act, 1958, and therefore, in our opinion, there exists an alternative efficacious remedy under Section 14A of the Act which the petitioners ought to pursue.

7. We, therefore, reject the petition on the ground of availability of alternative remedy to the petitioners without going into the merits of the case and leave it open to the petitioners to raise all the contentions that are tried to be raised in the present petition before the Revisional Authority. Rule is discharged with no order as to costs.

8. Civil Application No. 2421 of 2003 seeking direction for release of the vehicle will not survive and stands disposed of.

(R.K. ABICHANDANI, J)

(K.M. MEHTA, J)

(pkn)